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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

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UNITED STATES OF AMERICA

v.

CHRISTOPHER CANTWELL

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1:20-cr-6-01-PB

September 24, 2020

1:50 p.m.

TRANSCRIPT OF JURY TRIAL DAY 3
AFTERNOON SESSION
BEFORE THE HONORABLE PAUL J. BARBADORO

Appearances:

For the Government:

John S. Davis, AUSA

Anna Z. Krasinski, AUSA

United States Attorney's Office

For the Defendant:

Eric Wolpin, Esq.

Jeffrey S. Levin, Esq.

Federal Defender's Office

Court Reporter:

Liza W. Dubois, RMR, CRR

Official Court Reporter

I N D E X

<u>WITNESS:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
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BRETT FERNALD

By Ms. Krasinski	7
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CHRISTOPHER CANTWELL	Transcribed under separate cover
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<u>EXHIBITS</u>	<u>FOR ID</u>	<u>IN EVD</u>
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Government's Exhibit 105		21
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1 P R O C E E D I N G S

2 THE COURT: I just want to get some timing issues
3 together here.

4 So the government is going to have one more witness,
5 play a couple of excerpts, and rest. I assume the defendant
6 will have a motion. Is there -- can you give me a sense of how
7 long the government's witness will be on direct?

8 MS. KRASINSKI: Maybe 25 minutes to half an hour,
9 your Honor.

10 THE COURT: Okay. And you've told the defense who
11 the witness is?

12 MS. KRASINSKI: Yes, your Honor.

13 THE COURT: How -- about how long do you anticipate
14 with cross? I know it depends on what happens in direct,
15 but --

16 MR. LEVIN: I don't think long, your Honor. I don't
17 know what the witness is going to testify, but -- I know part
18 of what the witness is going to testify about and then there's
19 some other stuff, apparently, that I don't know.

20 THE COURT: You know, lawyers don't get -- really
21 have the fun of surprise anymore. When I was trying cases, I
22 tried a case against Bob Stein and the defendant was a state
23 senator who was a business partner with Bill Shaheen, who was
24 the U.S. Attorney at the time.

25 And I don't know if you ever tried a case with Bob,

1 but Bob would -- instead -- in the defense case, he not only
2 wouldn't tell us anything in advance, he wouldn't announce the
3 witness's name. He would just walk into the back of the
4 courtroom and bring a person in.

5 And I would try the case -- I would try the case
6 with a colleague and we'd look at the person, do you know who
7 that is? I don't know. Do you want to do him? You do him.
8 That's how we -- and that's how much notice we got of what was
9 happening in our cases back then as a prosecutor. The defense,
10 of course, got all the notice.

11 So a short witness, it sounds like. I guess what
12 I'm going to have to do is hear that evidence, have you rest,
13 and excuse the jury for a motion. Is that --

14 MR. LEVIN: (Nods head.)

15 THE COURT: All right. And do you anticipate we
16 will be bringing the jury back in for additional evidence?

17 MR. WOLPIN: I guess it's a question of timing and
18 how the Court wishes to operate over the next, you know,
19 36 hours. I mean, my -- I think it's fair to say the odds are
20 that Mr. Cantwell will testify.

21 THE COURT: Okay.

22 MR. WOLPIN: So whether the Court wishes us to begin
23 that today or whether it wishes that to start tomorrow --

24 THE COURT: I'm inclined to have it begin today with
25 the idea that if that's your only witness, we'll finish with

1 him -- if we finish before noon, I have a strong preference for
2 having both arguments -- all arguments and charge on the same
3 day. I don't like to -- so I -- if it gets much beyond the
4 lunch break, I have trouble hearing any of the closing
5 arguments. So I'd like to push, and that's what I'll do.

6 But it sounds like then we will have evidence and so
7 I don't see any efficient way to avoid it. I'll just have to
8 tell the jury to come out, we'll take a 15-minute break, and
9 then you can start your -- start your case. All right? So
10 that'll be the plan.

11 MR. WOLPIN: Thank you.

12 THE COURT: All right. Are we ready to bring the
13 jury in?

14 Okay. We'll bring the jury in.

15 WITH THE JURY PRESENT

16 THE CLERK: Please be seated. This hearing is back
17 in session.

18 THE COURT: So let me update you on scheduling.

19 The government has one more witness that should be
20 relatively short. We're going to then take a break and the
21 defense will have an opportunity to put on evidence.

22 I have told you several times, but I'll just remind
23 you, of course. The defendant has no obligation to put on any
24 evidence. A defendant has -- is entitled to a presumption of
25 innocence and he remains innocent unless the government proves

1 his guilt beyond a reasonable doubt. He has no obligation to
2 call any witnesses, ask any questions, and, of course, he has
3 no obligation to testify. He has a right not to testify. And
4 if he chooses not to testify, you can't hold his silence
5 against him in any way or even discuss the fact that he hasn't
6 testified.

7 But if there is a defense case here, I think there's
8 a very good prospect that we will conclude the case and have
9 closing arguments and charge on Friday. I can't guarantee it,
10 but that's where I'm currently thinking we're likely to be.

11 So there's a possibility you could have the case to
12 begin deliberating on Friday and, if not, you should have it on
13 Monday with plenty of time. So we're -- we're well within our
14 time schedule.

15 All right. So could you call your next witness,
16 please.

17 MS. KRASINSKI: United States calls Officer Fernald.

18 THE CLERK: Raise your right hand.

19 **BRETT FERNALD**, having been first duly sworn,
20 testified as follows:

21 THE CLERK: Thank you. Would you please state your
22 name and spell your last name for the record.

23 THE WITNESS: My name is Brett Fernald,
24 F-e-r-n-a-l-d.

25 THE COURT: All right. You can be seated.

1 THE WITNESS: Thank you, sir.

2 THE COURT: Go ahead, Counsel.

3 DIRECT EXAMINATION

4 BY MS. KRASINSKI:

5 Q. By whom are you employed?

6 A. I'm employed by the Manchester, New Hampshire,
7 Police Department.

8 Q. And how long have you served the Manchester Police
9 Department?

10 A. Seven and a half years.

11 Q. And before that, what did you do?

12 A. I was a police officer in Hooksett, New Hampshire,
13 for two and a half years.

14 Q. And before you joining the Hooksett Police
15 Department, did you undergo any training?

16 A. Yes. I went to the New Hampshire Police Academy. I
17 graduated class 154 and I graduated in April of 2011.

18 Q. And what'd you do before that?

19 A. Before I got into law enforcement, I served in the
20 U.S. Army as an Airborne Ranger and I was honorably discharged
21 in May of 2010.

22 Q. And what's your current assignment?

23 A. My current assignment is a task force officer with
24 the FBI.

25 Q. How long have you been a task force officer with the

1 FBI?

2 A. Since May of 2019.

3 Q. Were you involved in the investigation into
4 Christopher Cantwell?

5 A. Yes, I was.

6 Q. And as -- when did you become involved?

7 A. I became involved when I -- my assignment was to be
8 a task force officer in May of 2019.

9 Q. And as part of that, have you listened to some
10 Radical Agenda episodes?

11 A. Yes, I have.

12 Q. Have you listened to Mr. Cantwell on the first
13 episode of the BowlCast?

14 A. Yes, I did.

15 Q. Have you watched interviews of Mr. Cantwell?

16 A. Yes.

17 Q. Have you listened to Mr. Cantwell's recorded jail
18 calls?

19 A. Yes, I have.

20 Q. And as a result of this, have you become familiar
21 with Mr. Cantwell's voice?

22 A. Yes, I have.

23 Q. Now, I want to first turn to Radical Agenda
24 episodes. Where'd you find the episodes that you listened to?

25 A. They are available on the Internet to the public.

1 There's a few different ways you can --
2 christophercantwell.com, joshwhotv.com, bitchute.com,
3 radicalagenda.com.

4 Q. And as part of this investigation, were some of
5 those episodes downloaded?

6 A. Yes.

7 Q. Other than making the audio recording or the
8 recording of the podcast itself, is there anything else that
9 Mr. Cantwell did in relation to each Radical Agenda episode?

10 A. He stated in his show that the live show, sometimes
11 he would edit out things and then present the edited version on
12 the podcast on his website.

13 Q. Did he put anything else on his website?

14 A. Yes.

15 Q. What would he put on his website in relation to
16 each --

17 A. The website would have -- it would have an episode
18 description, each episode would have a title, it would have a
19 stage number, an episode number, a brief synopsis of the
20 episode, and it would have the date that it was published.

21 MS. KRASINKSI: I want to show the witness only
22 what's been marked for identification as Government's Exhibit
23 114B.

24 Do you recognize that?

25 A. Yes, I do.

1 Q. What is it?

2 A. That is from christophercantwell.com. It is the way
3 each episode was presented on the website. It has a picture,
4 displays Radical Agenda, it gives the stage number, it gives
5 the episode, and it gives a title of the episode. It also has
6 the date and at the bottom you can also see that it's
7 christophercantwell.com.

8 Q. And so you -- you know that this was something that
9 came from the defendant's website?

10 A. Yes.

11 MS. KRASINSKI: Your Honor, I move to admit
12 Government's Exhibit 114B.

13 MR. LEVIN: Objection, 403. We don't have an
14 objection to the exhibit, but to the image on the exhibit, we
15 think should be redacted.

16 THE COURT: The one that's on the screen now?

17 MR. LEVIN: Yes.

18 THE COURT: Are you introducing it for that purpose
19 of that --

20 MS. KRASINSKI: No, your Honor.

21 THE COURT: -- that image?

22 MS. KRASINSKI: It's for the date and to associate
23 it with the website, your Honor.

24 THE COURT: How easily could you produce an exhibit
25 that redacts the image or blocks the image?

1 MS. KRASINSKI: Just one moment, your Honor.

2 THE COURT: All right.

3 MR. LEVIN: We would have the same objection to
4 the -- 115B. I don't know if that's where they're going,
5 but ...

6 Thank you.

7 THE COURT: All right. It'll be admitted with the
8 redactions.

9 So there's an image on there that has no bearing on
10 the case, so we're taking that out.

11 You can go ahead and show it to the jury.

12 (Government's Exhibit 114B admitted.)

13 Q. And, Officer Fernald, can you tell us the date and
14 title of this episode?

15 A. Yes. It's Radical Agenda S05E044, titled False Flag
16 Day, and the date is June 14th, 2019.

17 Q. Now, in preparation for your testimony today, did
18 you review Government's Exhibit 114?

19 A. Yes.

20 Q. And what's that?

21 A. It's the audio.

22 Q. And is Exhibit 114 a short portion of that Radical
23 Agenda episode?

24 A. Yes, it is.

25 Q. What portion is it?

1 A. It's the beginning portion where Mr. Cantwell says
2 the date and he says where he's broadcasting from.

3 Q. And how do you know it's Mr. Cantwell that says
4 that?

5 A. Through my investigation, I've become familiar with
6 his voice.

7 MS. KRASINSKI: Your Honor, I move to admit
8 Government's Exhibit 114.

9 MR. LEVIN: No objection.

10 THE COURT: Without objection.

11 (Government's Exhibit 114 admitted.)

12 (Audio recording played.)

13 Q. And where did Mr. Cantwell say he was coming from?

14 A. He said he was from Keene, New Hampshire.

15 Q. And that's where the Radical Agenda studio is?

16 A. Yes.

17 Q. And did you confirm that during the investigation?

18 A. Yes, I did.

19 Q. And where is the Radical Agenda studio in Keene,
20 New Hampshire?

21 A. It's located at 103 South Lincoln Street, Keene,
22 New Hampshire.

23 Q. Let's briefly turn to Government's Exhibit 115B for
24 the witness only. It's been marked for identification.

25 Now, we will redact the image from this in a moment,

1 but do you recognize this?

2 A. Yes, I do.

3 Q. What is it?

4 A. It's a posting on christophercantwell.com
5 referencing the Radical Agenda episode. It gives the episode,
6 it gives the stage number, it gives the episode number, the
7 title of the episode, and it also gives the date of the
8 episode.

9 Q. And how do you associate that with Mr. Cantwell?

10 A. At the bottom, christophercantwell.com, and on the
11 show he refers listeners to that website and he appears to take
12 ownership of that website.

13 MS. KRASINSKI: Your Honor, subject to a redaction
14 of the image, I move to admit Government's Exhibit 115B. We
15 won't publish it until --

16 THE COURT: All right. Any objection, subject to
17 the -- if it's redacted in the way you're proposing?

18 MR. LEVIN: No, your Honor.

19 THE COURT: It'll be admitted, subject to the
20 redaction.

21 MS. KRASINSKI: So we won't publish it at this time.

22 (Government's Exhibit 115B admitted.)

23 Q. Officer Fernald, in preparation for your testimony
24 today, did you review Government's Exhibit 115?

25 A. Yes, I did.

1 Q. And what's that?

2 A. It's an audio recording that -- Mr. Cantwell's voice
3 saying it's the Radical Agenda and he gives the date and
4 location that he's broadcasting from.

5 Q. So, again, a similar introduction to the Radical
6 Agenda show?

7 A. Yes.

8 MS. KRASINSKI: Your Honor, I move to admit
9 Government's Exhibit 115.

10 MR. LEVIN: No objection.

11 THE COURT: Without objection. It can be played.

12 (Government's Exhibit 115 admitted.)

13 (Audio recording played.)

14 Q. So, again, Mr. Cantwell said he was in Keene,
15 New Hampshire?

16 A. That's correct.

17 Q. And how did these dates, June 14th, 2017 -- excuse
18 me -- June 14th, 2019, and June 17th, 2019, relate to the
19 messages between Mr. Cantwell and Mr. Lambert?

20 A. June 14th is the day prior to the exchange on
21 June 15th and June 17th is the day that Mr. Cantwell calls
22 Missouri CPS.

23 Q. Now, let's switch gears for a bit and talk about
24 Mr. Cantwell's jail calls.

25 As part of the investigation, did you obtain and

1 listen to his jail calls?

2 A. Yes, I did.

3 Q. And what was the process for doing that?

4 A. The process was after Mr. Cantwell's arrest on
5 January 23rd, I contacted Strafford County House of
6 Corrections. From there I was referred to Sandy Bower, she's
7 a records supervisor, and I would make a request for the dates
8 in which I would like the phone calls and she would put the
9 dates -- she would put those phone calls on a CD for me and I
10 would go to Dover, New Hampshire, and pick up the CD.

11 Q. And the CD, it contains the recordings of the calls
12 themselves?

13 A. Yes.

14 Q. Did it also contain associated data?

15 A. Yes. It obtained -- each CD obtained the software
16 to enable the jail calls to play.

17 Q. So what other information were you able to identify
18 about each call?

19 A. So each call would -- it would tell both parties
20 that the calls are being recorded and they can be used in
21 criminal proceedings. It tells -- there's a recording of
22 Mr. Cantwell's voice saying it's -- that's who the call's from
23 and each call, it will give the -- the dial number, so the
24 number that Mr. Cantwell called, would be displayed and --

25 Q. Was there a date?

1 A. And also there would be a date associated with when
2 the call was placed.

3 Q. Now, that sort of admonishment that you talked
4 about, that the call was being recorded and could be used in
5 criminal proceedings, was that admonishment given at the
6 beginning of every single jail call?

7 A. Yes.

8 Q. In preparation for your testimony today, did you
9 review Government's -- what's been marked for identification as
10 Government's Exhibit 110?

11 A. Yes, I did.

12 Q. And what is that?

13 A. Exhibit 110 is a jail call from February 28th
14 between Mr. Cantwell and Hannah Pleasants.

15 Q. February 28th of what year?

16 A. Sorry. February 28th of 2020.

17 Q. And you said it's between Mr. Cantwell and someone
18 named Hannah Pleasants?

19 A. Yes.

20 Q. Who is that?

21 A. She appears to be a friend of Mr. Cantwell.

22 MR. LEVIN: Objection, speculation.

23 THE COURT: Overruled.

24 Q. Now, have you listened to the entire February 28th,
25 2020, call between Mr. Cantwell and Ms. Pleasants?

1 A. Yes, I have.

2 Q. And Exhibit 110 is a portion of that call?

3 A. Yes, it is.

4 Q. And is it a true and accurate portion of that call?

5 A. Yes, it is.

6 Q. Other than limiting the exhibit to that portion, was
7 the call edited, altered, modified, in any way?

8 A. No, it's not.

9 MS. KRASINSKI: Your Honor, I move to admit and
10 publish Government's Exhibit 110.

11 THE COURT: All right. All prior objections are
12 preserved. Any other objections?

13 MR. LEVIN: No other objections.

14 THE COURT: All right. It can be admitted.

15 (Government's Exhibit 110 admitted.)

16 (Audio recording played.)

17 Q. And, now, you said that that call occurred on
18 February 28th, 2018?

19 A. Yes.

20 Q. And when was the superseding indictment filed in
21 this case?

22 A. July 8th, 2020.

23 Q. And is that when Mr. Cantwell was charged with
24 threat to injure property or reputation?

25 A. Yes.

1 Q. So after this call?

2 A. After the call.

3 Q. Now, in preparation for your testimony --

4 THE COURT: I may have misheard the original date.

5 Did you say February 28th, 2018?

6 MS. KRASINSKI: If I did, that would be incorrect.

7 THE COURT: That's what I believe you said. Is it
8 correct?

9 MS. KRASINSKI: No.

10 THE COURT: It's 2019, isn't it?

11 THE WITNESS: 2020.

12 Q. This call -- what's the date of this call?

13 A. The day of the jail call with Hannah Pleasants,
14 February 28th, 2020.

15 THE COURT: Okay. All right. So there's no dispute
16 about that. She just misspoke.

17 All right.

18 MS. KRASINSKI: Thank you, your Honor.

19 Q. In preparation for your testimony today, did you
20 review Government's Exhibit 111?

21 A. Yes, I did.

22 Q. What is that?

23 A. It's a jail call between Mr. Cantwell and Ingrid
24 Dean.

25 Q. Who is Ingrid Dean?

1 A. Ingrid Dean is a friend -- appears to be a friend of
2 Mr. Cantwell.

3 | Q. And what's the date of that call?

4	A. March 7th, 2020.
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5 Q. And, again, have you listened to the entire
6 March 7th, 2020, call between Mr. Cantwell and Ms. Dean?

7	A. Yes, I have.
---	-----------------

8 Q. And is it -- Exhibit 111 a portion of that call?

9 | A. Yes, it is.

10 Q. Is it a true and accurate copy of the portion of
11 that call?

12	A. Yes, it is.
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13 Q. Other than limiting the exhibit to the relevant
14 portion, has the exhibit or has the call been altered or
15 modified in any way?

16	A. No, it has not.
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17 MS. KRASINSKI: Your Honor, I move to admit
18 Government's Exhibit 111.

19 THE COURT: Subject to the prior objections, are
20 there any additional objections?

21 MR. LEVIN: Just the prior objections, your Honor.

22 THE COURT: All right. Those objections are
23 preserved and overruled.

24	You can play the excerpt.
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25 (Government's Exhibit 111 admitted.)

1 (Audio recording played.)

2 Q. Now, Officer Fernald, did you hear Mr. Cantwell
3 mention a phone call between himself and Katelen in that jail
4 call?

5 A. Yes.

6 Q. And during the course of the investigation, did you
7 become aware that Mr. Cantwell had emailed a recording to the
8 FBI of a conversation he had with a woman?

9 A. Yes.

10 Q. And who was the woman that he had that conversation
11 with?

12 A. Katelen Fry.

13 Q. And what was the date that Mr. Cantwell emailed his
14 recorded conversation to the FBI?

15 A. December 12th, 2019.

16 Q. And what was the date of Mr. Cantwell's arrest?

17 A. January 23rd, 2020.

18 Q. So Mr. Cantwell's December 12th, 2019, recorded
19 conversation, that was before Mr. Cantwell was arrested?

20 A. Yes.

21 Q. Was it before he was charged?

22 A. Yes.

23 MS. KRASINSKI: Your Honor, I believe based
24 on Agent Tongbua's testimony and discussion with the parties,
25 at this point I'd move to introduce Government's Exhibits 105,

1 106, and 108, which are portions of that call.

2 THE COURT: Are there objections other than those --
3 any of those previously raised?

4 MR. LEVIN: No, just the ones we previously made,
5 your Honor.

6 THE COURT: All right. Those will be admitted
7 subject to those objections being overruled.

8 (Government's Exhibits 105, 106, 108 admitted.)

9 MS. KRASINSKI: And permission to publish, your
10 Honor?

11 THE COURT: Yes.

12 MS. KRASINSKI: Let's do them, actually, in reverse
13 order. Let's start with Government's Exhibit 108.

14 (Audio recording played.)

15 MS. KRASINSKI: All right. Let's listen to
16 Government's Exhibit 106.

17 (Audio recording played.)

18 MS. KRASINSKI: And, finally, Government's
19 Exhibit 105.

20 (Audio recording played.)

21 MS. KRASINSKI: Nothing further, your Honor.

22 THE COURT: Thank you. Cross-examination?

23 MR. LEVIN: No questions, your Honor.

24 THE COURT: Thank you, sir. You can step down.

25 (Witness excused.)

1 THE COURT: Does the government have any additional
2 witnesses?

3 MR. DAVIS: Could we have just a moment, your Honor?

4 THE COURT: Yes.

5 And I'll note if there are any exhibits that were
6 inadvertently omitted that were not moved into evidence, we can
7 do that as a cleanup matter later.

8 MS. KRASINSKI: Your Honor, I think there's one last
9 item -- one last portion of the call between Katelen Fry and
10 Christopher Cantwell. That's Government's Exhibit 109.

11 THE COURT: All right. So you need to -- do you
12 need to recall the witness?

13 MS. KRASINSKI: We've already --

14 MR. LEVIN: That's not necessary from our
15 perspective, your Honor.

16 THE COURT: All right. So you're not disputing that
17 this call was a call in which the person who appears to be
18 Mr. Cantwell is, in fact, Mr. Cantwell; is that what we're
19 talking about?

20 MR. LEVIN: That's correct.

21 THE COURT: All right. So the -- the parties
22 stipulate as to this call that the person whose voice you will
23 recognize as being Mr. Cantwell's is, in fact, Mr. Cantwell's
24 voice and the government -- and the defense, subject to
25 objections previously raised with me, has no additional

1 objections to playing that tape.

2 MR. LEVIN: That's correct.

3 THE COURT: All right. So you can go ahead and play
4 that --

5 MS. KRASINSKI: Thank you, your Honor.

6 THE COURT: -- additional --

7 (Government's Exhibit 109 admitted.)

8 (Audio recording played.)

9 MS. KRASINSKI: Your Honor, the United States rests.

10 THE COURT: All right. Members of the jury, we'll
11 take a short break and I'll be bringing you back into the
12 courtroom to hear any defense case that they may have starting
13 in a few minutes.

14 So take your break now and we'll bring you back in
15 as soon as we're ready.

16 THE CLERK: All rise for the jury.

17 (Jury excused.)

18 THE COURT: All right. The defense has a motion.
19 I'll hear you on it.

20 MR. LEVIN: Yes, your Honor. At this time, the
21 defense would move to dismiss under Rule 29 of the Federal
22 Rules of Criminal Procedure.

23 Viewed in the light most favorable to the
24 government, no reasonable jury could find the defendant guilty
25 on any of the three counts on the facts presented.

1 We're making a general motion for acquittal under
2 Rule 29. We're not singling out any particular count or any
3 particular element of any count. We're making a general
4 insufficiency motion to dismiss at this time, your Honor.

5 THE COURT: All right. And you don't want
6 to specifically draw my attention to any particular deficiency,
7 just generally you don't think they've put in a case that any
8 juror could find guilt on as to any of the three charges?

9 MR. LEVIN: That's correct, your Honor.

10 THE COURT: All right. Construing the evidence in
11 the light most favorable to the government, based on the
12 arguments that have been presented to me, I believe there's
13 sufficient evidence to permit a reasonable jury to find the
14 defendant guilty on all three charges.

15 Accordingly, I deny the motion and the -- of course,
16 the defense can renew the motion at the appropriate time at the
17 end of its case if it chooses to do so.

18 I understand that there may be a defense case. Am I
19 right?

20 MR. WOLPIN: Correct.

21 THE COURT: And does that case consist of the
22 defendant as the -- the defense principal witness?

23 MR. WOLPIN: Yes, your Honor.

24 THE COURT: Mr. Cantwell, before you testify, I just
25 want to make sure you understand something. I go over it with

1 defendants at every -- every time we get to this point in the
2 proceeding.

3 That is, there are certain things that your lawyers
4 are principally responsible for in a case; they have to take
5 your advice, they have to consult with you, they have to listen
6 to you. But there are certain aspects of a trial where they
7 make the decision after consulting with you, like which
8 witnesses to call, what questions to ask those witnesses.
9 That's really the job of the lawyers in consultation with you.

10 There are other things that are exclusively your
11 judgment, you have complete control over. One of those things
12 is whether to testify or not to testify. As you heard me say,
13 you have a constitutional right to remain silent. I have told
14 and would continue to tell the jury they couldn't hold your
15 silence in any way against you. It's totally up to you to
16 decide whether to testify or not. Of course, I want you to
17 listen to your advice of counsel, but you have to make that
18 decision on your own.

19 Do you understand all of that?

20 THE DEFENDANT: I do, sir.

21 THE COURT: And understanding all of that, are you
22 electing to testify in your own behalf?

23 THE DEFENDANT: I am, Judge.

24 THE COURT: All right. So as far as I'm concerned,
25 we're ready to bring the jury back in and let's get started

1 with the case. Any reason why we can't go right ahead?

2 Oh, I did want to ask one thing. Let me ask my
3 marshals; how do you want to handle him getting to the witness
4 stand?

5 THE MARSHAL: I was just thinking that myself, your
6 Honor, and that would be your discretion. I'm not sure what --

7 THE COURT: All right. I am not worried that
8 Mr. Cantwell is a security threat. I'm sure -- he's been
9 completely compliant and I -- I'm sure he would obey my
10 instructions. I have no objection to him walking up to the
11 stand and taking it. I always listen to my marshals.

12 The other question I would have is sometimes the
13 marshal service people want to sit in closer proximity to the
14 defendant than across the room, but yet we may have -- I'd ask
15 my case manager who did this the last trial, have you thought
16 through that issue? Is there space for them to --

17 THE CLERK: At the last trial, your Honor, the
18 defendant wasn't in custody, so we didn't have an issue.

19 THE COURT: Yeah. I'm not sure as we sit here that
20 there's really much room for the marshals to sit consistent
21 with our social distancing policy.

22 Tracy, have you thought about this issue yet?

23 DEPUTY CLERK UHRIN: No. Do we have an empty chair
24 that we're not using for a juror? The only thing I could think
25 of --

1 THE CLERK: I could slide the jurors down.

2 DEPUTY CLERK UHRIN: -- have them slide down and
3 have him in the corner.

4 THE COURT: It isn't -- I mean, I want to be clear.

5 Mr. Cantwell, I don't think you're a danger to me or
6 anybody in the courtroom. I'm perfectly comfortable with it.
7 I just always have to listen to advice I get from my security
8 folks on it.

9 So one of the marshals, senior Marshal Service
10 persons, is on his way up and I'll take his advice. But I want
11 to reiterate I'm not worried about you, Mr. Cantwell; I don't
12 think the prosecutor's worried about you; but I -- I do listen
13 to my security people, at least hear what they have to say.

14 All right. So our security chief has entered the
15 courtroom.

16 Sir, I wanted to consult with you about --
17 Mr. Cantwell's elected to testify. We have in -- usually when
18 someone's in custody testifying in my courtroom, we move them
19 before the jury's brought in to the witness box and we have
20 marshals people sitting within closer proximity than they're
21 currently sitting.

22 Mr. Cantwell is in custody. It's my judgment that I
23 am comfortable -- I personally am comfortable with him walking
24 to the witness stand and taking his seat there. I note that
25 it's hard for me to see how I could configure the courtroom

1 consistent with social distancing rules and have your personnel
2 sitting close by.

3 So I'm -- I'm -- personally, I have no problem with
4 Mr. Cantwell testifying there with your personnel where they
5 are, but if there's a particular security concern you have and
6 a recommendation for me, I at least want to hear it.

7 THE MARSHAL: If I could just take a quick look,
8 your Honor.

9 THE COURT: Yeah, go ahead.

10 THE MARSHAL: Thank you. I appreciate it.
11 These are two jurors?

12 THE COURT: Right.

13 THE MARSHAL: Your Honor, if we could just maybe
14 keep this door propped --

15 THE COURT: Yup.

16 THE MARSHAL: -- and I can have one of my security
17 staff right over here. I think that will cover it.

18 THE COURT: I think that's a fine solution.

19 So we'll allow Mr. Cantwell, when called, to walk to
20 the witness stand. He can testify as he normally does. The
21 one difference from ordinary is that the rear courtroom door
22 will remain open and a marshal service person will be in the
23 vicinity of the open door.

24 And I -- I'm completely satisfied with that, sir. I
25 think that's a good recommendation. Thank you.

1 All right. So let's -- let's deal with it that way
2 and we're ready to bring the jury in.

3 WITH THE JURY PRESENT

4 THE CLERK: Please be seated. This hearing is back
5 in session.

6 THE COURT: All right. The defense may call its
7 first witness.

8 MR. WOLPIN: The defense would call Mr. Cantwell.

9 THE COURT: Mr. Cantwell, come on up. Stand by the
10 witness stand and raise your right hand, please.

11 (Testimony of Christopher Cantwell filed under separate cover.)

12 (Proceedings adjourned at 4:40 p.m.)
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C E R T I F I C A T E

I, Liza W. Dubois, do hereby certify that
the foregoing transcript is a true and accurate transcription
of the within proceedings, to the best of my knowledge, skill,
ability and belief.

Submitted: 5/12/21

/s/ Liza W. Dubois
LIZA W. DUBOIS, RMR, CRR